PUBLIC BANK BHD

v.

MUHIBBAH MERIDIAN SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
KL REKHRAJ J
[COMPANIES WINDING-UP NO: D6-28-64-2000]
3 JULY 2000

COMPANY LAW: *Winding-up - Debt due and payable - Debt on a judgment against which appeal pending - Whether winding-up petition may be brought based on such judgment debt - Whether debt is an undisputed debt - Whether petition ought to be stayed until disposal of appeal - Whether court has power to order stay - Companies Act 1965, s. 222*

The petitioner obtained summary judgment against the respondent for a certain sum of money. The respondent lodged an appeal against that decision. Meanwhile, the petitioner instituted winding-up proceedings based on the summary judgment. The issue before the court was whether winding-up proceedings based on a judgment against which an appeal was pending might be brought.

Held:

[1] The presentation of winding-up petitions is not a means of execution as envisaged under O. 45 of the Rules of the High Court 1980. Rather, it is an independent proceeding taken out under the Companies Act 1965 where one of the ingredients is a debt due and payable upon demand under the threat of winding-up. Where a debt is disputed, as in this case, being a debt on a judgment presently subject to and awaiting an appeal, it certainly cannot be said to be an undisputed debt.

[2] The judgment in question is not a final judgment that has finally disposed of the rights of the parties. To be final, it must be said to be the last and conclusive judgment without any right of appeal. In any event, s. 222 of the Companies Act 1965 grants the court an unlimited jurisdiction to grant a stay and/or to restrain the petitioner from presenting such a petition, especially so if the court is satisfied that the debt is still a contentious civil matter.

[Stay of proceedings pending appeal against summary judgment.]

Case(s) referred to:
Solid Kitchen v. Regal Development Sdn Bhd [1998] 3 CLJ Supp 409 ***(refd)***

Legislation referred to:
Companies Act 1965, ss. 218, 222
Rules of the High Court 1980, O. 45

For the petitioner - MY Goh; M/s Iza Ng Yeoh & Kit
For the respondent - S Sinnappan; M/s Vazeer Akbar Majid & Co

Reported by S Dharmendran

JUDGMENT

KL Rekhraj J:

The petitioners obtained a summary judgment against the respondents on 4 February 1999 before the senior assistant registrar of the High Court Kuala Lumpur in Civil Suit No D3-22-1323-1998 in the sum of RM19,977,353.62 sen being the amount worked up as a 31 March 1998, together with continuing running interest thereon.

The respondents immediately lodged an appeal against the decision of the senior assistant registrar, to the judge in chambers; and the appeal is fixed for hearing on 20 July 2000 (please see encl. (57)).

The respondents had also made an application to the senior assistant registrar for a stay of execution of the summary judgment; but this application was dismissed with costs on 15 October 1999. The petitioners then proceeded to issue a statutory demand under s. 218 of the Companies Act 1965 on 26 November 1999, for RM25,686,460.46 sen and followed up with a petition on 24 January 2000.

The respondent through their solicitors then served on the petitioners on 22 March 2000, notice of intention to attend the hearing of the petition; and by an affidavit in opposition dated 18 April 2000, filed the opposition and counter affidavits in reply.

At the hearing of the petition and upon reading the written submissions of the petitioners, I granted a stay of proceedings pending the disposal of appeal fixed for 20 July 2000. The petitioners being dissatisfied now appeal against my decision in granting stay.

In a similar circumstances in the case of *Solid Kitchen v. Regal Development Sdn Bhd* [1998] 3 CLJ Supp 409 I held that presentation of winding-up petitions were not a means of execution envisaged under O. 45 of the Rules of the High Court; but are independent proceedings taken out under the Companies Act 1965; where one of the ingredient was the establishment

of a **"debt" due and payable, upon demand** under a threat of winding up; in that by proving that the debt is due and payable upon demand. But where the debt is disputed, as is in this case, being a debt on a judgment of the senior assistant registrar; and presently subject to and awaiting an appeal to the judge in chamber or to the superior court, it certainly cannot be said to be an undisputed debt (judgment), just because the senior assistant registrar has granted judgment.

It is not a final judgment, that has finally disposed off the rights of the parties. To be final, it must be said to be the last and conclusive judgment without any right; or subject of appeal. At most, such a judgment in the interim is either a contingent creditor, because his debt will only become due to him on an event upon the successful launching of the appeal, or a prospective creditor; in that the debt crystalises upon the determination of the appeal in favour of the petitioner; and until then neither of the creditors, other than the judgment creditor has a right to present a petition, without first establishing the debt.

In any event, s. 222 of the Companies Act 1965 specifically provides:

> At any time after the presentation of a winding up petition, and before a winding up order has been made, **the company** or any creditor or contributory may where any action or proceedings (appeal) against the company is pending, apply to the Court **to stay** or restrain **further proceedings** in the action or proceeding (in this case the Petition) and the **Court may stay** or restrain the proceedings accordingly on such terms as it thinks fit.

This section grants the Commercial Court, a court of co-ordinate jurisdiction in the High Court, the unfettered discretion; and an unlimited jurisdiction to grant a stay, and or to restrain the petitioner from presenting such a petition, especially so, if the court was satisfied that the debt was still a contentious civil matter, subjudice and pende lite. After all the courts administer justice and the word "justice" is not "just-ice"; but a load of unfettered discretions available to the presiding judge to exercise the balance of convenience in a manner applicable to each and every circumstance; as may be necessary for the purpose of justice!